BRB No. 24-0026

KUSHTRIM HYSENI Claimant-Petitioner v. FLUOR CONOPS, LTD. and INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA Employer/Carrier-Respondents	)	**NOT-PUBLISHED** DATE ISSUED: 08/13/2025 DECISION and ORDER

Appeal of the Decision and Order Denying Compensation and Benefits of Richard M. Clark, Administrative Law Judge, United States Department of Labor.

Lara D. Merrigan (Merrigan Legal), Campbell, California, and Brian Gillette (Gillette Law Firm), Sugar Land, Texas, for Claimant.

Lawrence P. Postol (Postol Law Firm, P.C.), McLean, Virginia, for Employer and its Carrier.

Before: ROLFE and JONES, Administrative Appeals Judges, and ULMER, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Richard M. Clark's Decision and Order Denying Compensation and Benefits (2020-LDA-02271) rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §§901-950 (Act), as extended by the Defense Base Act, 42 U.S.C. §§1651-1655 (DBA). We must affirm the ALJ's findings of fact and conclusions of law if they are

rational, supported by substantial evidence, and in accordance with applicable law.[1] 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant began working for Employer in January 2010 as an IT Coordinator I.[2] Hearing Transcript (TR) at 29; *see* Employer's Exhibits (EXs) 4, 5. In 2013, he was promoted to IT Coordinator II.[3] TR at 56. Claimant alleges he sustained a work-related psychological injury as a result of his work for Employer in Afghanistan, during which he claims to have experienced traumatizing incidents in March 2010, May 2010, December 2010, May or June 2012, and right before terminating his work for Employer in 2014. TR at 31-39. He stated he witnessed rocket attacks, sometimes multiple per day either at or near where he worked and lived; he described panicking with "unimaginable fear," hiding in bunkers and under a desk, viewing human flesh and blood, and seeing people taken away by ambulances. *Id.* Claimant also testified about an incident in March 2012 which involved gunshots and fire. *Id.* at 34.

Claimant testified he suffered from fear, stress, anxiety, rapid heartbeat, lack of productivity, difficultly sleeping, and nightmares while in Afghanistan.[4] TR at 30-32, 34, 41, 62-67. Additionally, he complained about back, neck, and arm pain, as well as episodes of temporary numbing in his arms and feet. *Id.* at 41, 65-66. Claimant testified he also experienced trouble communicating and socializing, was nervous and angry, and had issues with loud noises. *Id.* at 41, 46-47. He explained he did not report his symptoms to Employer while he was working due to a lack of "proper doctors" and the fear they would not allow him to continue working. *Id.* at 41.

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[1] This case arises within the jurisdiction of the United States Court of Appeals for the Second Circuit because the office of the district director who filed the ALJ's decision is located in New York. 33 U.S.C. §921(c); *Glob. Linguist Sols., L.L.C. v. Abdelmeged*, 913 F.3d 921 (9th Cir. 2019); *McDonald v. Aecom Tech. Corp.*, 45 BRBS 45 (2011).

[2] Claimant previously worked in Afghanistan from March 2007 to December 2009 for Kellogg Brown & Root, Inc., as a food service worker, document control specialist, and document control manager. TR at 26-29.

[3] Claimant started with Employer in April 2010 in "Data and Document Management" and became an IT Coordinator in January 2011. EX 10 at 1-2.

[4] Claimant testified the living conditions in Afghanistan were "terrible," and that he experienced sleeplessness and nightmares since his arrival in Afghanistan in 2007, which worsened with the "bad events." EX 23 at 31-34; TR at 28.

Claimant resigned from his work with Employer for "personal reasons" on October 2, 2014, and flew home on October 4, 2014. EX 17 at 2-3. He stated his symptoms continued even after he returned home. TR at 60. He also stated he experienced increased depression because he felt "worthless" from being unemployed.[5] *Id.* at 68-69.

Claimant visited Dr. Agim Zejna, a family doctor and his treating physician at FMC Shtime, and complained of symptoms such as ear noises, neck pain, arm and back pain, sleep issues, headaches, stomach pain, and vomiting, in March 2015, July 2017, March 2018, and May 2019. EX 11 at 1-5; TR at 70-72. He testified he did not discuss his psychological problems with Dr. Zejna at first because he was ashamed. TR at 41. He also hoped the symptoms would disappear and the prescribed pain medication would help, but because they did not, Dr. Zejna recommended he see a psychiatrist. EX 23 at 46; TR at 41, 71-74.

On November 20, 2019, Claimant sought mental health treatment with psychiatrist Dr. Ramadan Halimi. EX 12. Dr. Halimi diagnosed Claimant with Post-Traumatic Stress Disorder (PTSD) due to his work in a warzone based on his reported symptoms, his reported experiences, and DSM-5 and ICD-10 criteria. *Id.* at 3-4. He opined Claimant has a diminished capacity for employment and should not return to his work, and he recommended a combination of medications and therapy.[6] *Id.* at 4. By January and February 2021, Dr. Halimi noted Claimant is "feeling better" but is still experiencing symptoms.[7] EX 13 at 9-10; *see also* TR at 46-47.

At Employer's request, clinical psychologist and neuropsychologist Dr. Kate Glywasky interviewed Claimant on February 24, 2021, reviewed his treatment records, and administered various psychological tests. Claimant's Exhibit (CX) 4 at 6; EXs 14 at 7, 15; TR at 112, 119-120. She opined Claimant does not have, and has not had, PTSD or any

[5] Claimant's only job after working for Employer was when he worked in construction for approximately two weeks during 2018. EX 10 at 1.

[6] Although Claimant testified at the hearing that during his first session Dr. Halimi told him he cannot work while in treatment, TR at 46, and testified at his deposition that Dr. Halimi did not restrict his work but only advised he continue treatment, EX 23 at 52, Dr. Halimi's monthly reports consistently indicated "currently, due to health conditions [Claimant] is not fit for duty." EXs 12 at 5, 13 at 1-10.

[7] Claimant was still undergoing treatment at the time of the hearing. EXs 7, 13; TR at 43.

other psychological condition related to his work with Employer. CX 4 at 70-71; EX 14 at 7-8; TR at 116-121, 125.

Meanwhile, Claimant had filed a claim under the Act on November 30, 2019, seeking benefits for his alleged psychological condition.[8] EX 1 at 3. Employer, who first received notice of the alleged injury through an Office of Workers' Compensation Programs (OWCP) letter dated February 14, 2020, controverted the claim on February 25, 2020. EXs 1 at 1, 3. The case was transferred to the Office of Administrative Law Judges (OALJ) for a hearing, which the ALJ held on June 28, 2021.

On September 21, 2023, the ALJ issued his Decision and Order, finding Claimant did not establish he has a work-related psychological condition, including but not limited to PTSD. The ALJ first found Claimant established a prima facie case of compensable injury and invoked the Section 20(a) presumption, 33 U.S.C. §920(a), based on documentation of a PTSD or stress disorder diagnosis from Dr. Halimi and Claimant's testimony. Decision and Order (D&O) at 13. However, he also determined Employer rebutted the presumption with Dr. Glywasky's medical opinion that Claimant does not have PTSD or any other work-related psychological harm. *Id*. at 14.

Considering the evidence as a whole, the ALJ found Claimant was "fairly credible" and "generally consistent" between his deposition and hearing testimonies but also determined there were "some notable inconsistencies," specifically regarding his description of the March 2010 incident and the purported onset of his symptoms. D&O at 15. He assigned great weight to Dr. Glywasky's report and testimony because he determined the doctor is credible and well-qualified, and her opinion is well-reasoned, explained, and documented. *Id.* at 18-20. Contrarily, the ALJ assigned less weight to Dr. Halimi's opinion because it: 1) lacked sufficient detail and explanation; 2) did not discuss the specific tests administered or their results; 3) failed to address Claimant's delay in seeking mental health treatment; and 4) did not indicate review of other records or discuss Dr. Glywasky's opinion. *Id.* at 20. As the ALJ determined the weight of the evidence demonstrates Claimant's failure to carry his burden of proof by a preponderance of the evidence, he concluded Claimant did not suffer a work-related psychological injury and denied benefits. *Id.* at 21.

[8] Employee's Claim for Compensation (LS-203), Employer's First Report of Injury (LS-202), and the Notice of Controversion (LS-207) all indicated Claimant's claimed injury is "PTSD." EXs 1 at 3, 2, 3. Claimant's Pre-Hearing Statement (LS-18) indicated the claim is for "a psychological injury." CX 1.

Claimant appeals the ALJ's denial of benefits for his psychological condition. He contends the ALJ erred in finding Dr. Glywasky's opinion rebutted the Section 20(a) presumption and in finding he is not entitled to benefits. Employer responds, urging the Board to reject Claimant's arguments and affirm the denial of benefits.

Causation

When, as in this case, the Section 20(a) presumption is invoked,[9] *Rose v. Vectrus Sys. Corp.*, 56 BRBS 27 (2022) (en banc), *appeal dismissed* (M.D. Fla. Aug. 24, 2023); *see also Rainey v. Director, OWCP*, 517 F.3d 632, 634 (2d Cir. 2008), the burden shifts to the employer to produce substantial evidence that is "specific and comprehensive enough" to sever the connection between the claimant's condition and his employment. *Am. Stevedoring Ltd. v. Marinelli*, 248 F.3d 54, 65 (2d Cir. 2001); *Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 288 (5th Cir. 2000); *see Noble Drilling Co. v. Drake*, 795 F.2d 478, 481 (5th Cir. 1986) (substantial evidence is enough that a reasonable mind could accept to support a conclusion). If the employer successfully rebuts the presumption, the issue of causation must be resolved on the evidence as a whole with the claimant bearing the burden of persuasion by a preponderance of the evidence. *Rainey*, 517 F.3d at 634; *Marinelli*, 248 F.3d at 65; *Universal Mar. Corp. v. Moore*, 126 F.3d 256, 262 (4th Cir. 1997); *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171, 175 (1996).

Section 20(a) Rebuttal

Claimant contends the ALJ erred in finding Dr. Glywasky's opinion sufficient to rebut the Section 20(a) presumption. He maintains the doctor conflated the Act's "injury" and "disability" requirements by using the DSM-5's criteria for a disorder. Cl's Brief at 17-20. He further asserts Dr. Glywasky's opinion considered only present symptoms without examining past symptoms and does not comport with the ALJ's facts and credibility findings. *Id.* at 20-24. He also asserts that, to rebut the presumption, Employer's evidence must focus solely on the work connection and cannot attack the invoking elements. Contrary to Claimant's contentions, the ALJ correctly found Dr. Glywasky's opinion rebuts the Section 20(a) presumption.

An employer's burden at rebuttal is one of production, not one of persuasion. *Rainey*, 517 F.3d at 634. An employer need only introduce substantial evidence showing a claimant's condition was not caused by his work. *Conoco Inc. v. Director, OWCP*, 194 F.3d 684, 690 (5th Cir. 1999). Therefore, at rebuttal, the ALJ need

[9] As the parties do not challenge the ALJ's findings on invocation of the Section 20(a) presumption for Claimant's alleged PTSD or other psychological condition, we affirm them. *Scalio v. Ceres Marine Terminals, Inc*., 41 BRBS 57, 58 (2007); D&O at 13.

not be persuaded by an employer's evidence; it is only necessary for the employer to proffer "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[10] *Truczinskas v. Director, OWCP*, 699 F.3d 672, 677-678 (1st Cir. 2012); *Bath Iron Works Corp. v. Fields*, 599 F.3d 47, 53 (1st Cir. 2010); *Newport News Shipbuilding & Dry Dock Co. v. Holiday*, 591 F.3d 219, 226 (4th Cir. 2009) (such evidence need not prove a litigant's theory of the case is "more likely than not" to have occurred, "it need only provide enough facts to support one rational conclusion."). A medical opinion of non-causation rendered to a reasonable degree of medical certainty is sufficient to rebut the presumption. *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39, 41-42 (2000); *see also Am. Grain Trimmers v. Director, OWCP [Janich]*, 181 F.3d 810, 818 (7th Cir. 1999) (en banc) ("vague and speculative" evidence does not meet an employer's rebuttal burden to produce "substantial evidence").

Dr. Glywasky opined, to a reasonable degree of medical certainty, that Claimant does not have PTSD or any work-related psychological condition. She based her opinion on her review of the records, a clinical interview, and test results. EX 14 at 7; TR at 121. Her unequivocal opinion that Claimant did not sustain PTSD or any psychological injury as a result of his employment is sufficient to rebut the presumption of compensability.[11]

We first reject Claimant's assertion that Employer's rebuttal evidence must focus solely on rebutting the presumed legal connection of an injury or harm to employment. An employer may submit evidence to rebut any element necessary to invoke the presumption – it is not restricted to accepting the claimant's version of those facts as controlling and to rebutting only the purported employment link between them.[12] Cl.'s Brief at 32-34. The

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[10] An employer need not rule out every conceivable connection between an injury and the employment. *Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283, 288 (5th Cir.), *cert. denied*, 540 U.S. 1056 (2003). It also need not rebut every theory of recovery, as the presumption attaches only to claims made. *U.S. Indus./Fed. Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 613 n.7 (1982).

[11] Dr. Glywasky also testified Claimant did not show any restlessness or avoidance behavior when discussing the traumatic events at his appointment. TR at 122-123.

[12] Indeed, the rebuttal stage is the employer's first opportunity to address whether the claimant suffered a harm or was subject to working conditions or a work accident that could have caused the harm. To prohibit an employer's rebuttal evidence from offering contradictory facts would mean that invoking the presumption automatically establishes the facts as asserted by the claimant despite the ALJ's inability to assess the credibility of those facts.

Section 20(a) rule is an application of the "bursting bubble" theory of evidentiary presumptions, derived from a decision the Supreme Court of the United States issued in *Del Vecchio v. Bowers,* 296 U.S. 280 (1935).[13] If a hole is poked in the bubble through evidence relied upon to invoke the presumption, the presumption disappears from consideration. *Rainey*, 517 F.3d at 634; *Marinelli*, 248 F.3d at 65. In other words, the hole in the bubble is created by introducing additional evidence that contradicts the elements that allowed the party to invoke the presumption in the first place. Consequently, we reject Claimant's assertion that an employer may rebut the Section 20(a) presumption only if it establishes the claimant's injury is not legally work-related. That being said, Dr. Glywasky opined both that Claimant does not have a psychological condition and that he does not have a *work-related* injury.

Next, we reject Claimant's assertion that Dr. Glywasky improperly conflated the Act's terms of "injury"[14] and "disability"[15] by using the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-5) to assess a claimant's psychological condition.[16] This argument is incorrect and inserts impermissible weighing and credibility factors into the rebuttal analysis.

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[13] The Court explained that when a trier-of-fact must be persuaded of one truth or another, a party bears the burden of going forward with the case. Once this step is passed, the other party bears the burden of showing any contradictory facts. If it does so, the presumption drops from the case completely and can no longer work in the original party's favor. *Del Vecchio*, 296 U.S. at 286-287.

[14] Section 2(2) of the Act defines "injury" as an "accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury[.]" 33 U.S.C. §902(2); *Wheatley v. Adler*, 407 F.2d 307, 313 (D.C. Cir. 1968) (en banc) (a harm occurs when "something unexpectedly goes wrong within the human frame"); *Romeike v. Kaiser Shipyards*, 22 BRBS 57 (1989) (a claimant need not show a specific illness or disease in order to establish an injury under the Act; he need only establish some form of harm).

[15] Section 2(10) of the Act defines "disability" as incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment. 33 U.S.C. §902(10).

[16] The parties, the ALJ, and the Board have previously relied on opinions using the DSM-5 testing or diagnostic criteria to support their positions or a particular outcome. *See generally Sylejmani v. Fluor ConOps, Ltd.*, 57 BRBS 25 (2023); *Rose*, 56 BRBS 27. Therefore, it would not be unreasonable for the ALJ to view credibly a doctor's opinion

The DSM-5 sets forth the diagnostic criteria for PTSD and other psychological disorders.[17] Under the Act, a doctor is neither required to use, nor prohibited from using, the DSM-5 to diagnose PTSD or other psychological injury. *S.K. [Kamal] v. ITT Indus., Inc.*, 43 BRBS 78, 79-80 (2009), *aff'd in part and rev'd in part mem.*, No. 4:09-MC-348, 2011 U.S. Dist. LEXIS 21721 (S.D. Tex. Mar. 1, 2011).[18] If, however, a physician bases a diagnosis on the DSM criteria, then he or she must identify and support those criteria in reaching a conclusion.[19] *Jackson v. Ceres Marine Terminals, Inc.*, 48 BRBS 71, 77 n.8 (2014), *aff'd sub nom. Ceres Marine Terminals, Inc. v. Director, OWCP*, 848 F.3d. 115 (4th Cir. 2016). Dr. Glywasky unequivocally opined Claimant "does not have PTSD or any psychological condition caused or aggravated by his work for Employer, and he does not show evidence of any psychiatric impairment."[20] EX 14 at 7. Not only does Claimant's

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based on the DSM-5 criteria provided both the doctor's opinion and the ALJ's opinion are fully explained.

[17] The DSM-5 Criteria A through H for diagnosing PTSD involve exposure to a traumatic event, followed by the presence of specific symptoms in four categories: intrusion (at least one symptom required), avoidance (at least one symptom required), negative alterations in cognition and mood (at least two symptoms required), and arousal and reactivity (at least two symptoms required). These symptoms must be present for at least one month and cause significant distress or impairment in functioning. *See* American Psychiatric Association (March 2022) *Diagnostic and Statistical Manual of Mental Disorders* (5th ed., text rev.), https://doi.org/10.1176/appi.books.9780890425787; *see also* CX 15.

[18] In *Kamal*, the Board rejected the employer's argument that the claimant failed to establish a psychological injury because his doctors did not analyze his condition using the DSM-IV. *Kamal*, 43 BRBS at 79-80. The United States District Court for the Southern District of Texas affirmed the Board's decision but stated "if a physician explicitly claims to base his diagnosis on the criteria in the DSM-IV, then he must either support those elements or state why, in his opinion, a particular element need not be supported under the facts of the particular diagnosis." 2011 U.S. Dist. LEXIS 21721, at 37-38.

[19] It is axiomatic that a psychological "injury" constitutes a "harm" within the meaning of the Act. *Butler v. Dist. Parking Mgmt.*, 363 F.2d 682 (D.C. Cir. 1966); *Am. Nat'l Red Cross v. Hagen*, 327 F.2d 559 (7th Cir. 1964); *Sewell v. Noncommissioned Officers Open Mess, McCord Air Force Base*, 32 BRBS 127 (1997), *aff'd on recon. en banc*, 32 BRBS 134 (1998); *Konno v. Young Bros., Ltd.*, 28 BRBS 57 (1994).

[20] It is somewhat incongruous for Claimant to take issue with Employer's expert's use of the DSM-5 to conclude he does not have a psychological disorder when his own

argument go towards assessing the weight of the evidence, Dr. Glywasky did not confuse or substitute "injury" with "disability." EX 14 at 7-8. Rather, she stated she "use[d] the diagnostic criteria through DSM-5" to assess the existence of PTSD (i.e.: "meet the specific four criteria" and "have an impairment of everyday functioning") and to determine symptom malingering.[21] CX 4 at 26; TR at 104-106. She used the tool to form her opinion; she did not, as Claimant asserts, discuss his condition in terms of his inability to earn wages as contemplated by the Act.[22] In addition, Dr. Glywasky did not limit her opinion to the PTSD symptomatology; she broadly and unequivocally denied Claimant suffered any work-related psychological injury. Thus, we reject Claimant's assertion that her opinion is insufficient to support rebuttal.

Next, Claimant argues both that Dr. Glywasky's opinion does not rebut the existence of every symptom he claimed to have suffered in the past or any symptom potentially being suppressed by medication[23] and that her opinion considered only present symptoms without examining past symptoms. We reject Claimant's arguments, as Claimant misinterprets the doctor's opinion. Cl.'s Brief at 20-24.

Dr. Glywasky considered Claimant's history, including information about his time in Afghanistan, and she noted he denied having problems performing his work or problems with sleep, anxiety, or moodiness while working for Employer. EX 14 at 1-4; TR at 119-120; *see also* CX 4 at 28, 31; EX 14 at 7-8. She also noted inconsistencies regarding a variety of symptoms he claimed to have at various times.[24] Dr. Glywasky determined that

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medical expert, Dr. Halimi, used the DSM-5 criteria, as well as another standardized tool, to conclude Claimant has PTSD. EXs 12, 13.

[21] While she stated he did not have sufficient testing factors to diagnose him as malingering, she opined he was inconsistent and omitted information which appears to have led her to question the validity of his statements. EX 24 at 26-29.

[22] Instead, Dr. Glywasky concluded Claimant was able to perform his job well without any signs or evidence of behavioral issues or reduced productivity – thereby addressing impairment of function and not disability. EX 14 at 7-8.

[23] Dr. Glywasky never said Claimant had symptoms that improved due to medication. Instead, she stated Claimant reported improvement with medication, but Dr. Glywasky also stated that Claimant's report contradicted Dr. Halimi's reports. EX 24 at 35-36.

[24] According to Dr. Glywasky, Claimant stated he did not have any lingering psychological symptoms until 2014. EX 14 at 7; TR at 114-115. Claimant reported to Dr. Glywasky that he received treatment, or "calming pills" for anxiety since 2014, but the

while Claimant may have had "intermittent anxiety symptoms" when hearing incoming alarms, he did not demonstrate "evidence of psychiatric impairment," and "there is no documented evidence of [C]laimant experiencing clinically significant anxiety or mood symptoms." EX 14 at 7-8. She further stated that under the DSM-5 those intermittent symptoms were likely attributable to an "acute stress reaction" or "acute stress response" from negative or traumatic experiences, "stress response … is normal," and as with Claimant, it does not amount to PTSD or any psychiatric disorder. TR at 105-106; s*ee also* EX 24 at 14, 70-71.

Moreover, Dr. Glywasky stated many people will witness something traumatic during their life and have a reaction, but what a diagnosis of PTSD means is that there is a "disorder." TR at 103-104. She opined the frequency and types of symptoms Claimant endorsed during testing as having experienced "fell below clinical cutoffs" and were "within non-clinical range." EX 14 at 7. Therefore, contrary to Claimant's argument, Dr. Glywasky adequately considered past and present symptoms, and ultimately found there is insufficient evidence of any psychiatric condition related to Claimant's work for Employer. EX 14 at 8.

Additionally, we reject Claimant's remaining arguments regarding other aspects of Dr. Glywasky's opinion that also impose a weighing or credibility factor at the rebuttal stage. Cl.'s Brief at 24-32. A discussion of whether Dr. Glywasky's opinion is consistent with the ALJ's credibility determination of Claimant's testimony and whether it was "too harsh" for the ALJ to rely upon discrepancies the doctor observed in Claimant's presentation of symptoms and event recitation are clearly matters of weighing the evidence at the third stage of causation, not for rebuttal. *See, e.g., Jackson*, 48 BRBS at 75 (in weighing evidence ALJ examined logic of doctor's opinion and found it questionable). Credibility and weighing have not yet come into play at this stage of the analysis. *Rainey*, 517 F.3d at 634.

Dr. Glywasky clearly opined Claimant does not have PTSD or any other psychological condition caused or aggravated by his employment. Her report constitutes substantial evidence casting doubt on the presumed connection between Claimant's alleged injury and his employment by definitively stating the opinion that the alleged injury does not exist and there is no work connection. *O'Kelley*, 34 BRBS at 41-42; *see Bourgeois v.*

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doctor saw no record of such treatment until 2019; Claimant followed up with Dr. Zejna from 2015 to 2019 for physiological pain symptom relief such as body aches, not anxiety or other psychological symptoms. EX 14 at 3, 7. Dr. Glywasky also found it "highly unlikely" that Claimant would have experienced the progressive psychological symptoms he described at the hearing and not seen a mental healthcare provider until 2019. TR at 125.

Director, OWCP, 946 F.3d 263, 265 (5th Cir. 2020) (finding the Section 20(a) presumption was rebutted by a medical opinion stating the evidence showed no proof of the alleged injury). We, therefore, affirm the ALJ's conclusion that Dr. Glywasky's opinion rebuts the Section 20(a) presumption. *Marinelli*, 248 F.3d at 65; *Truczinskas*, 699 F.3d at 677-678; *Fields*, 599 F.3d at 53; *Holiday*, 591 F.3d at 226. We further reject Claimant's assertion that he wins his case at invocation.

Weighing

To the extent Claimant challenges the ALJ's findings on weighing the evidence as a whole, substantial evidence and sufficient explanation support the ALJ's decision.[25] D&O at 18-20; *see Pietrunti v. Director, OWCP*, 119 F.3d 1035, 1042 (2d Cir. 1997); *Sealand Terminals v. Gasparic*, 7 F.3d 321, 323 (2d Cir. 1993); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403, 405 (2d Cir. 1961); *Pisaturo v. Logistec, Inc.*, 49 BRBS 77, 81 (2015). The ALJ was persuaded by Dr. Glywasky's "well-explained" and "well-supported" opinion. D&O at 19. He noted the doctor clearly explained the diagnosis and nature of PTSD, along with her opinion that the record does not support finding Claimant suffers from this disorder or from any work-related psychological condition, and this conclusion is buttressed by "her experience, the records, the interview, and the test results," and is based on a reasonable degree of medical certainty. *Id.* The ALJ emphasized Dr. Glywasky's discussion of Claimant's inconsistent symptom reporting about his ability to function and perform his job well in Afghanistan. D&O at 19; EX 24 at 26-29, 69-71. He also credited the doctor's opinion that she would have expected Claimant's functioning to decrease if he had PTSD, and that it is "highly unlikely" Claimant would have experienced the progressive symptoms he described and not seek medical care until 2019. D&O at 19; TR at 125. Additionally, he considered Claimant's statement to Dr. Glywasky that his

[25] Claimant generally argues Employer failed to produce substantial evidence to support the ALJ's factual findings as a whole. Cl.'s Brief at 11. Claimant also generally contends the decision is not supported by substantial evidence as a whole. *Id.* at 33. To the extent Claimant's two-sentence mention of the ALJ's findings on "evidence as a whole" in his brief's introduction and conclusion, and as part of a section heading, could be deemed as "raising the issue," and constitute a challenge on appeal, it is inadequately briefed. *Montoya v. Navy Exch. Serv. Command*, 49 BRBS 51, 52 n.1 (2015); *Plappert v. Marine Corps Exch.*, 31 BRBS 109, 116 (1997), *aff'g on recon. en banc* 31 BRBS 13 (1997). A party challenging the ALJ's finding must demonstrate why, in terms of law and evidence, the finding is not supported by substantial evidence or in accordance with law. 20 C.F.R. §802.211(b). Further, we affirm as unchallenged on appeal the ALJ's decision to give little or no weight to Dr. Halimi's opinion. *Scalio*, 41 BRBS at 58; D&O at 19-20.

symptoms did not commence until his return home, which is not "the typical standard or trajectory of PTSD diagnosis." D&O at 19; TR at 121. For these reasons, the ALJ found Dr. Glywasky's opinion is entitled to significant weight, and the weight of the evidence demonstrates that Claimant's symptomology did not rise to the level of a psychological injury. D&O at 19, 21. Therefore, he concluded Claimant failed to carry his burden in establishing he suffered a work-related injury. *Id.* at 21.

The Board may not reweigh the evidence or substitute its opinion for that of the ALJ even if the evidence could support other inferences or conclusions. *See, e.g., Newport News Shipbuilding & Dry Dock Co. v. Winn*, 326 F.3d 427, 430 (4th Cir. 2003). The Board must accept the ALJ's weighing of the evidence if it is rational and supported by substantial evidence. *See Smith v. Chater*, 99 F.3d 635, 637-638 (4th Cir.1996) (if substantial evidence supports an ALJ's findings, the reviewing body must sustain the ALJ's decision, even if it might disagree with those findings); *Mendoza v. Marine Pers. Co.,* 46 F.3d 498, 500-501 (5th Cir. 1995); *Pittman Mech. Contractors, Inc. v. Director, OWCP [Simonds]*, 35 F.3d 122, 127 (4th Cir. 1994); *Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 944 (5th Cir. 1991).

Dr. Glywasky found "significant discrepancies" and omission of information between Claimant's self-reporting of symptoms and his medical records that belied his claim of a psychological problem. EXs 14 at 7-8, 24 at 26-31, 40-41, 69-70. She also noted Claimant did not report having any symptoms while working, and he was able to perform his job well, obtaining at least three promotions while he was working for Employer.[26] EXs 14 at 7-8, 24 at 70-71; TR at 116-117, 121. TR at 117; *see also* EX 24 at 70-71. This, in conjunction with her administration of psychological testing and her credentials, supports the ALJ's determinations.

Because the ALJ has the discretion to weigh the evidence, and he fully explained why he gave credence to Dr. Glywasky's opinion, his findings are rational and supported by substantial evidence. *Pietrunti*, 119 F.3d at 1042; *Gasparic*, 7 F.3d at 323; *Hughes*, 289 F.2d at 405; *Pisaturo*, 49 BRBS at 81. Therefore, we affirm his conclusion that Claimant does not have a work-related psychological condition and his consequent denial of

[26] While a symptom can be an injury under the Act, it is subjective, and not every symptom amounts to an injury. *See Welch v. Pennzoil Co*., 23 BRBS 395, 401 (1990); "Symptom." Merriam-Webster.com Dictionary, https://www.merriam-webster.com/dictionary/symptom (accessed July 29, 2025) ("subjective evidence of disease or physical disturbance").

benefits. *Sistrunk v. Ingalls Shipbuilding, Inc.*, 35 BRBS 171, 174 (2001); *Coffey v. Marine Terminals Corp.*, 34 BRBS 85, 87 (2000); D&O at 21.

Accordingly, we affirm the ALJ's Decision and Order Denying Compensation and Benefits.

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Acting Administrative Appeals Judge